



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831
December 19, 2012

Re: JIC Advisory Opinion 2012-24.

Dear Judge :

Your request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows: On November 30, 2012, you took the oath of Office as Judge of the Judicial Circuit. Prior to becoming Judge, you served as a Hearing Examiner for . In that capacity, you would conduct hearings to determine whether Certified Nurse's Aides (CNA's) should be placed on a registry for abuse and/or neglect of patients. You would then submit a recommended decision to the Secretary of the West Virginia Department of Health and Human Resources, who would either accept or modify the proposed opinion. Any appeal is heard by the Circuit Court in the county in which the facility is located.

You had one matter pending at the time you became Judge. The hearing was held in October 2012 in County. However, you did not receive the transcript and proposed findings of fact and conclusions of law until sometime in December. Consequently, you were not able to prepare the recommended decision before you became Judge. You want to know if you can complete the recommended decision and bill for your time even though you are now a sitting judge. You believe you should be able to prepare the proposed opinion because you would be engaging in a quasi-judicial function, any appeal would be heard in County and it would be more efficient for you to handle the matter since you heard the evidence.

To address the question which you have raised, the Commission has reviewed Canon 4G of the Code of Judicial Conduct which provides:

Canon 4. A Judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

G. Practice of law – A judge shall not practice law. Notwithstanding this prohibition, a judge may act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

By drafting the recommended decision and receiving payment, you would be engaging in the practice of law which is clearly prohibited by Canon 4G. Indeed, the scope of any practice by a sitting judge is severely restricted to assisting close family members in limited ways and without remuneration. Accordingly, you are precluded from drafting the recommended opinion for

It is hoped that this opinion fully addresses the issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat